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MICHAEL RODAK, JR., CLE

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-272

THE SEMINOLE NATION OF OKLAHOMA,
*Petitioner,*

v.

THE UNITED STATES OF AMERICA,
*Respondent.*

**PETITION FOR REHEARING ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS**

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Petitioner respectfully petitions the Court for a rehearing on its Order of January 27, 1975, denying the petition for a writ of certiorari to the United States Court of Claims to review that Court's decision of June 19, 1974, 204 Ct.Cl. ___, 497 F.2d ___, which conflicts with the decisions of this Court, its own decisions, and those of the Circuit Courts of Appeal.

Petitioner herein presents substantial grounds and effect not previously presented, based upon the following opinions to show that the Seminole Nation, petitioner herein, had tribal title to one-half of the minerals and royalties from Seminole lands, reserved to it in the Seminole Agreement, approved July 1, 1898, 30 Stat. 567:

1. Felix S. Cohen, *Handbook of Federal Indian Law*, U.S. Dept. of Interior, Office of the Solicitor, Washington, D.C., 1945, p. 313; and
2. *26 Op. A.G. 347, 348* (1907).

1.

Felix S. Cohen has been recognized and relied upon by this Court, the Court of Claims, and by the Indian Claims Commission, as the foremost authority on Federal Indian Law.[1] Mr. Cohen stated:

> "***Further recognition of tribal mineral leases is found in the statutes referred to in Attorney General Stone's opinion, which, in allotting lands, reserved to the tribe the underlying mineral rights.[286] ***."[2]

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[1] Cf. *Creek Nation v. United States*, 318 U.S. 629, 639 (1943); *United States v. Native Village of Unalekleet, et al.*, 188 Ct.Cl. 1, 12 (1969); *Gila River-Pima Maricopa Community, et al. v. United States*, 33 Ind. Cl. Comm. 18, 26 (1974).

In the *Native Village Case*, the Court stated:

> "***Mr. Cohen's standing in the world of legal scholarship would justify a court in citing him as authority in his own right, as it might Williston on a question of contract law or Wigmore on evidence.***"

[2] Cohen's reference is to 34 Op. A.G. 181 (1924), an opinion of Harlan Fiske Stone, later Chief Justice.

Footnote 286 referred to states:

> "***Act of July 1, 1898, 30 Stat. 567 (reserving to Seminole tribe half interest in minerals underlying allotted lands)."

Thus Cohen concluded that under the 1898 Seminole Agreement the Seminole Nation had tribal title to one-half the minerals and royalties in Seminole lands. Moreover, Cohen places the Osage Nation's mineral rights on the same level as those of the Seimnole Nation – both being reserved to the tribe. Petitioner, in its petition (pp. 4, 34-35), cited *In re Dennison*, and *Taylor v. Tayrien*, both Osage cases, as authority to show the conflict between Cohen's opinion with the Court of Claims decision in this Seminole case, with respect to the Seminole Nation's title to the minerals and royalties in Seminole lands.

2.

In 26 Op. A.G. 347, 348 (1907), the Attorney General was concerned with the effect of the Act of 1906 (34 Stat. 137) upon the 1898 Seminole Agreement. The opinion relies upon *Cherokee Nation v. Hitchcock*, 187 U.S. 294, 306, 307 (1902), upon which petitioner also relies, to establish a conflict with the Court of Claims decision in this *Seminole case* (Pet. 4, 16, 32, 33). The *Hitchcock case* held that mineral rights and royalties of the Cherokee Nation were the property of the Nation and not of individual allottees. The Attorney General ruled:

> "There is nothing to differentiate the case of the Seminoles from that of the Cherokees. As said with respect to the latter, whatever title the Seminoles have to their lands is in the tribe and not in the individuals."

*Moore* and *Fish*, and 35 Op. A.G. 421 (Resp. Memo. in Opposition, pp. 4-5), dealt with situations *after* the passage of the 1908 Act, and did not relate to the title of the Seminole Nation *prior* to the 1908 Act, which is the issue here. These decisions were made before the Indian Claims Commission Act was passed, and were not based upon the new jurisdictional provisions of Clause 5, Section 2 of the Indian Claims Commission Act. The Court of Claims decision herein rested solely upon the issue of title, and failed to remand the case because the 1972 decision of the Commission failed to find that the Seminole Nation lost its tribal title to the minerals and royalties because of the wrongful action of respondent's Commissioner of Indian Affairs in securing the passage of the 1908 Act without the knowledge and consent of the Seminole Nation, as set forth in the 1966 findings of the Indian Claims Commission. This Court has never passed upon these facts under the fair and honorable dealings provision of the Indian Claims Commission Act. As this Court stated in *United States v. Jim*, 409 U.S. 80, 82, fn. 3:

> "We intimate no view as to the rights a tribe might have if Congress were to deprive it of the value of mineral royalties generated by tribal lands."

Petitioner submits that the Court of Claims decision is in conflict with Cohen and with the Attorney General, and that a rehearing should be granted in this case.

Respectfully submitted,

Paul M. Niebell,
*Counsel for the Seminole Nation, petitioner*

*Of Counsel:*

Charles Bragmen,
Michael S. Yaroschuk

February, 1975.

## CERTIFICATE OF SERVICE

I, Paul M. Niebell, counsel for the Seminole Nation, petitioner, do hereby certify that the above petition for rehearing is presented in good faith, and not for delay, and that the petition is restricted to the grounds above specified.

Paul M. Niebell.